

## 21 C.J.S. Courts § 53

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### Courts

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### II. Jurisdiction of Courts

#### D. Jurisdiction of Person

##### 4. Particular Circumstances or Actions Affecting Exercise of Personal Jurisdiction

§ 53. Internet activity as basis for personal jurisdiction; e-mail contacts or communications

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Courts](#)  13.3(12)

**The type of Internet activity sufficient to establish personal jurisdiction is subject to an analysis applying a sliding scale to whether it is sufficient for minimum contacts with the forum state, or purposeful availment of the privilege of doing business in the forum, ranging from passive websites, found lacking sufficient contacts, to interactive websites which may provide sufficient contacts.**

In determining the type or extent of Internet activity sufficient for contacts with a forum state to establish personal jurisdiction, courts have adopted a sliding scale analysis of Internet activity.<sup>1</sup> The test, however, does not amount to a separate framework for analyzing Internet-based personal jurisdiction, as traditional principles remain the touchstone of the inquiry.<sup>2</sup> The ultimate question is whether the Internet activity purposefully avails the user of the privilege of doing business in the forum sufficient to support the exercise of personal jurisdiction over the user<sup>3</sup> or whether the

Internet activity constitutes minimum contacts by the user with the forum sufficient to support the exercise of personal jurisdiction over the user.<sup>4</sup>

At one end of the scale, jurisdiction does not attach where the nonresident maintains a passive website that merely provides information about the defendant's products or services,<sup>5</sup> particularly absent evidence that the business targets<sup>6</sup> or intends to serve the forum market.<sup>7</sup>

At the other end of the scale, jurisdiction attaches to a nonresident defendant when it transacts business in foreign jurisdictions via an interactive website where contracts are completed online and the defendant derives profit directly from web-related activity.<sup>8</sup> If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper.<sup>9</sup> A seller using an auction website as a broad platform to conduct regular commercial business in the forum state purposefully avails itself of the privilege of doing business in the forum sufficient to support the exercise of personal jurisdiction over the seller for related activities affecting a buyer in the forum.<sup>10</sup>

In between the two foregoing categories on the scale, there is a third type of website that is interactive in that it allows customers in foreign jurisdictions to communicate regarding the defendant's products and services.<sup>11</sup> A website like this may or may not be sufficient to assert personal jurisdiction, depending on the level of interactivity and the commercial nature of the information exchanged.<sup>12</sup> To the extent that the interactive features of the Internet are the creations of the owners and operators of websites, the interactive nature of a large-scale ubiquitous Internet presence cannot be fully imputed to an individual user, such as a nonresident defendant, for the purpose of determining whether the user established minimum contacts with the forum.<sup>13</sup>

Sellers' use of a third-party Internet auction site as a vehicle for sales to a forum buyer cannot serve as a shield and absolute bar to the exercise of in personam jurisdiction over the sellers, merely because the sellers did not choose the buyer or the buyer's state, when otherwise sufficient minimum contacts exist.<sup>14</sup>

Under statutes establishing personal jurisdiction based on the conduct of business transactions in the forum, minimizing the importance of intangible contacts with the state, Internet contacts are sufficient for personal jurisdiction if the effects of the contacts in the forum are substantial enough.<sup>15</sup>

### **Email.**

Emails may properly be considered in a minimum contacts analysis, especially if purposefully sent to a forum resident with knowledge that they would most likely be read in the forum.<sup>16</sup> The nature of communications controls, not the medium of the communications; electronic business communications with persons in the forum state, culminating in actual transactions, are sufficient for specific personal jurisdiction, particularly when accompanied by activities by the defendant in the forum.<sup>17</sup> However, e-mail negotiations culminating in a single sale may be insufficient to constitute continuous and systematic contacts with the forum for purposes of general personal jurisdiction,<sup>18</sup> and e-mail communications with one temporarily in the forum are insufficient when the transaction otherwise has no connection to the forum.<sup>19</sup> Email communications are insufficient to constitute the transaction of business in the forum when they are not the basis of the claim.<sup>20</sup>

## **CUMULATIVE SUPPLEMENT**

### **Cases:**

E-mails may be properly considered in determining whether a nonresident has minimum contacts with a forum state, as to provide forum with specific personal jurisdiction, especially if they were purposefully sent to a forum resident knowing that they would most likely be read in the forum. *Dixon v. GAA Classic Cars, LLC*, 2019 IL App (1st) 182416, 437 Ill. Dec. 856, 145 N.E.3d 429 (App. Ct. 1st Dist. 2019).

Defendant's one email and two social media messages to plaintiff did not constitute minimum contacts with Minnesota to justify Minnesota's exercise of personal jurisdiction over him, in action for malicious prosecution, abuse of process, civil conspiracy, invasion of privacy, and defamation arising from defendant posting plaintiff's personal information on internet forum and encouraging other posters to contact her; defendant only contacted plaintiff three times, and contacts did not seek to engage in business relationship with plaintiff and instead merely asked plaintiff to contact defendant. *Young v. Maciora*, 940 N.W.2d 509 (Minn. Ct. App. 2020).

Michigan operators of middleman internet website for software designers and vehicle mechanics lacked requisite due process minimum contacts with Nebraska to exercise specific personal jurisdiction over operators in products liability action that Nebraska trucking company owner brought alleging that semi-trucks were damaged by defective software installed by a local mechanic, where operators had no direct contacts with owner, operators did not design software, operators did not participate directly with mechanic in negotiations for creation of software, operators' relationship with mechanic began when mechanic reached out to operators upon finding

their website, and operators sent software invoices to mechanic and accepted payment directly from mechanic, after which operators remitted payment, minus commission, to software designer. U.S. Const. Amend. 14. *Wheelbarger v. Detroit Diesel ECM, LLC*, 313 Neb. 135, 983 N.W.2d 134 (2023).

Shareholder failed to allege that e-mail from successor corporation, which requested that shareholder sign restricted stock award agreement, provided basis for recovery for shareholder's claims of tortious conversion and violation of Uniform Deceptive Trade Practices Act, as was required to establish that Nebraska court had specific personal jurisdiction over successor under Nebraska's long-arm statute, where e-mail simply provided basis to find that successor disclosed change from statutory merger to share-for-share exchange and that shareholder declined to sign restricted stock agreement. *Neb. Rev. Stat. §§ 25-536, 87-301 et seq.* *Nimmer v. Giga Entertainment Media, Inc.*, 298 Neb. 630, 905 N.W.2d 523 (2018).

Operation and maintenance by corporations that owned hotel located in Pennsylvania of an interactive website through which patron purchased a room at hotel was too remote to support the exercise of long-arm or specific jurisdiction over corporations in New York, and thus did not confer trial court with personal jurisdiction over corporations in patron's action against corporations, alleging that bedbugs lodged in his belongings while he was staying at hotel. *N.Y. CPLR § 302(a)*. *Peldman v. Kalahari Resorts, LLC*, 208 A.D.3d 1107, 175 N.Y.S.3d 34 (1st Dep't 2022).

Existence of corporation's website was not a transaction of business within the state so as to confer personal jurisdiction over corporation and its principal pursuant to New York's long-arm statute, in action alleging breach of contract and fraud against corporation and principal, arising from their alleged failure to deliver software that they were paid to develop, where website was informational or passive in nature and did not permit users to purchase goods or services from corporation, or allow for any interaction with corporation. *N.Y. CPLR § 302(a)(1)*. *Fanelli v. Latman*, 202 A.D.3d 758, 162 N.Y.S.3d 140 (2d Dep't 2022).

American Psychological Association (APA) did not purposely avail itself of privilege of transacting business in Ohio when its legal counsel sent email announcement notifying APA's board of directors, two members of which were Ohio residents, that they could view, on a secure website, report concerning APA's investigation into allegations that APA collaborated with elements of federal government to promote abusive methods of interrogation, and thus trial court did not have specific jurisdiction over APA based on such email, in defamation action by witnesses in interviews conducted by APA as part of its investigation, even assuming legal counsel's email could be imputed to APA, since locations of members of APA's board of directors were coincidental to legal counsel's fulfillment of its obligation to deliver report to APA. *James v. Hoffman*, 2018-Ohio-2422, 112 N.E.3d 447 (Ohio Ct. App. 2d Dist. Montgomery County 2018), appeal not allowed, 153 Ohio St. 3d 1504, 2018-Ohio-4285, 109 N.E.3d 1260 (2018).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 Iowa—[Sioux Pharm, Inc. v. Summit Nutritionals Int'l, Inc.](#), 859 N.W.2d 182 (Iowa 2015).  
Neb.—[Abdouch v. Lopez](#), 285 Neb. 718, 829 N.W.2d 662 (2013).  
Tex.—[Gray, Ritter & Graham, PC v. Goldman Phipps PLLC](#), 2015 WL 5895302 (Tex. App. Corpus Christi 2015), petition for review filed, (Feb. 8, 2016).
- Disagreement with sliding scale standard**  
Ill.—[Howard v. Missouri Bone and Joint Center, Inc.](#), 373 Ill. App. 3d 738, 311 Ill. Dec. 533, 869 N.E.2d 207 (5th Dist. 2007).
- A.L.R. Library**  
Validity and Enforceability of Forum Selection Clauses in Internet Transactions, 84 A.L.R.6th 589.  
Individual and Corporate Liability for Libel and Slander in Electronic Communications, Including E-mail, Internet and Websites, 3 A.L.R.6th 153.  
Internet Web site activities of nonresident person or corporation as conferring personal jurisdiction under long-arm statutes and due process clause, 81 A.L.R.5th 41  
Effect of use, or alleged use, of Internet on personal jurisdiction in, or venue of, Federal court case, 155 A.L.R. Fed. 535.  
Neb.—[Abdouch v. Lopez](#), 285 Neb. 718, 829 N.W.2d 662 (2013).
- 2 U.S.—[Rovio Entertainment, Ltd. v. Allstar Vending, Inc.](#), 97 F. Supp. 3d 536 (S.D. N.Y. 2015) (applying New York law).  
Mo.—[Andra v. Left Gate Property Holding, Inc.](#), 453 S.W.3d 216 (Mo. 2015).  
N.Y.—[Collins v. Yodle, Inc.](#), 105 A.D.3d 1178, 963 N.Y.S.2d 742 (3d Dep't 2013).  
Tex.—[Proppant Solutions, LLC v. Delgado](#), 471 S.W.3d 529 (Tex. App. Houston 1st Dist. 2015).
- 3 Ga.—[American College Connection, Inc. v. Berkowitz](#), 332 Ga. App. 867, 775 S.E.2d 226 (2015).  
Mo.—[Andra v. Left Gate Property Holding, Inc.](#), 453 S.W.3d 216 (Mo. 2015).  
Tex.—[Wilkerson v. RSL Funding, L.L.C.](#), 388 S.W.3d 668 (Tex. App. Houston 1st Dist. 2011).  
Wis.—[Carlson v. Fidelity Motor Group, LLC](#), 2015 WI App 16, 360 Wis. 2d 369, 860 N.W.2d 299 (Ct. App. 2015).
- 4 U.S.—[Alkanani v. Aegis Defense Services, LLC](#), 976 F. Supp. 2d 13 (D.D.C. 2014), appeal dismissed, 2014 WL 4628907 (D.C. Cir. 2014) (applying District of Columbia law).  
Iowa—[Sioux Pharm, Inc. v. Summit Nutritionals Int'l, Inc.](#), 859 N.W.2d 182 (Iowa 2015).  
Neb.—[Abdouch v. Lopez](#), 285 Neb. 718, 829 N.W.2d 662 (2013).

N.M.—[Gallegos v. Frezza](#), 2015-NMCA-101, 357 P.3d 408 (N.M. Ct. App. 2015).

N.Y.—[Paterno v. Laser Spine Institute](#), 24 N.Y.3d 370, 998 N.Y.S.2d 720, 23 N.E.3d 988 (2014).

Tex.—[Gray, Ritter & Graham, PC v. Goldman Phipps PLLC](#), 2015 WL 5895302 (Tex. App. Corpus Christi 2015), petition for review filed, (Feb. 8, 2016).

**Passive advertising insufficient**

Tex.—[Riverside Exports, Inc. v. B.R. Crane & Equipment, LLC](#), 362 S.W.3d 649 (Tex. App. Houston 14th Dist. 2011).

Wis.—[Carlson v. Fidelity Motor Group, LLC](#), 2015 WI App 16, 360 Wis. 2d 369, 860 N.W.2d 299 (Ct. App. 2015).

6 N.M.—[Gallegos v. Frezza](#), 2015-NMCA-101, 357 P.3d 408 (N.M. Ct. App. 2015).

Tex.—[Washington DC Party Shuttle, LLC v. IGuide Tours](#), 406 S.W.3d 723 (Tex. App. Houston 14th Dist. 2013), review denied, (Aug. 22, 2014).

7 Tex.—[Riverside Exports, Inc. v. B.R. Crane & Equipment, LLC](#), 362 S.W.3d 649 (Tex. App. Houston 14th Dist. 2011).

8 U.S.—[Alkanani v. Aegis Defense Services, LLC](#), 976 F. Supp. 2d 13 (D.D.C. 2014), appeal dismissed, 2014 WL 4628907 (D.C. Cir. 2014) (applying District of Columbia law).

N.Y.—[Halas v. Dick's Sporting Goods](#), 105 A.D.3d 1411, 964 N.Y.S.2d 808 (4th Dep't 2013).

Tex.—[Gray, Ritter & Graham, PC v. Goldman Phipps PLLC](#), 2015 WL 5895302 (Tex. App. Corpus Christi 2015), petition for review filed, (Feb. 8, 2016).

Wash.—[Gorden v. Lloyd Ward & Associates, P.C.](#), 180 Wash. App. 552, 323 P.3d 1074 (Div. 3 2014).

**Targeted and knowing contacts required**

U.S.—[be2 LLC v. Ivanov](#), 642 F.3d 555 (7th Cir. 2011) (applying Illinois law); [inno360, Inc. v. Zakta, LLC](#), 50 F. Supp. 3d 587 (D. Del. 2014) (applying Delaware law).

Ind.—[Wolf's Marine, Inc. v. Brar](#), 3 N.E.3d 12 (Ind. Ct. App. 2014).

**Highly interactive website sufficient**

U.S.—[Rovio Entertainment, Ltd. v. Allstar Vending, Inc.](#), 97 F. Supp. 3d 536 (S.D. N.Y. 2015) (applying New York law).

9 Neb.—[Abdouch v. Lopez](#), 285 Neb. 718, 829 N.W.2d 662 (2013).

Tex.—[Gray, Ritter & Graham, PC v. Goldman Phipps PLLC](#), 2015 WL 5895302 (Tex. App. Corpus Christi 2015), petition for review filed, (Feb. 8, 2016).

10 Mo.—[Andra v. Left Gate Property Holding, Inc.](#), 453 S.W.3d 216 (Mo. 2015).

11 Neb.—[Abdouch v. Lopez](#), 285 Neb. 718, 829 N.W.2d 662 (2013).

Tex.—[Gray, Ritter & Graham, PC v. Goldman Phipps PLLC](#), 2015 WL 5895302 (Tex. App. Corpus Christi 2015), petition for review filed, (Feb. 8, 2016).

12 Ill.—[Larochelle v. Allamian](#), 361 Ill. App. 3d 217, 296 Ill. Dec. 761, 836 N.E.2d 176 (2d Dist. 2005).

**Interactive auction website**

Tex.—[Karstetter v. Voss](#), 184 S.W.3d 396 (Tex. App. Dallas 2006).

- 13 Tex.—[Wilkerson v. RSL Funding, L.L.C.](#), 388 S.W.3d 668 (Tex. App. Houston 1st Dist. 2011).
- 14 Okla.—[Guffey v. Ostonakulov](#), 2014 OK 6, 321 P.3d 971 (Okla. 2014).
- 15 Ga.—[American College Connection, Inc. v. Berkowitz](#), 332 Ga. App. 867, 775 S.E.2d 226 (2015).
- N.Y.—[Paradigm Marketing Consortium, Inc. v. Yale New Haven Hosp., Inc.](#), 124 A.D.3d 736, 2 N.Y.S.3d 180 (2d Dep't 2015).
- 16 U.S.—[Levin v. Posen Foundation](#), 62 F. Supp. 3d 733 (N.D. Ill. 2014) (applying Illinois law).
- Insufficient when not targeted**
- Minn.—[Trivedi LLC v. Lang](#), 2014 WL 2807981 (Minn. Ct. App. 2014).
- 17 Mo.—[Casework, Inc. v. Hardwood Associates, Inc.](#), 466 S.W.3d 622 (Mo. Ct. App. W.D. 2015), as modified on other grounds, (June 2, 2015) and reh'g and/or transfer denied, (June 2, 2015) and transfer denied, (Aug. 18, 2015).
- 18 N.C.—[Meyer v. Race City Classics, LLC](#), 761 S.E.2d 196 (N.C. Ct. App. 2014) review denied, 367 N.C. 796, 766 S.E.2d 624 (2014).
- 19 Fla.—[Swanky Apps, LLC v. Roony Invest & Finance, S.A.](#), 126 So. 3d 336 (Fla. 3d DCA 2013).
- 20 N.Y.—[SunLight General Capital LLC v. CJS Investments Inc.](#), 114 A.D.3d 521, 981 N.Y.S.2d 390 (1st Dep't 2014).

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